

IN THE UNITED STATES COURT DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,)	
)	Criminal No. 1:14CR397
v.)	
)	Judge Anthony J. Trenga
HANOCH DAVID STEIN,)	
)	
Defendant.)	

**MEMORANDUM IN SUPPORT OF DEFENDANT HANOCH DAVID STEIN'S
MOTION TO CONTINUE**

COMES NOW the Defendant, Hanoch David Stein, through counsel, and submits this memorandum of law and facts in support of his motion to continue the trial date. The motion to continue is for good cause and denial of this motion would deprive Mr. Stein his Sixth Amendment right to counsel.

Background

On or about December 3, 2014, Mr. Stein and six of his co-defendants were indicted in the Eastern District of Virginia on charges of conspiracy, importation contrary to law, introducing misbranded drugs and devices in interstate commerce, unlicensed wholesale distribution of prescription drugs, and conspiracy to commit money laundering. On January 28, 2015, Mr. Stein retained defense counsel Ari Casper to represent him in this matter. Mr. Casper is admitted in the United States District Courts of D.C. and Maryland, and the D.C. and Fourth Circuits Courts of Appeals.

On January 29, 2015, prior to Mr. Stein's arraignment and at the direction of Mr. Casper, Mr. Stein retained the law firm of BrigliaHundley, P.C.¹ to represent him as local counsel and admit Mr. Casper pro hac vice in the Eastern District of Virginia, in compliance with Local

¹ Specifically, Mr. James W. Hundley and Ms. Erin L. Blanch, of the law firm of BrigliaHundley, P.C., entered their appearance on behalf of Mr. Stein.

Federal Rule of Criminal Procedure 57.4. On January 30, 2015, both Mr. Casper and Ms. Blanch appeared for the arraignment of Mr. Stein and his co-defendants. The Court arraigned each defendant and set a trial date of March 30, 2015.

On February 6, 2015, the Court continued the trial from March 30, 2015 to April 7, 2015. On February 26, 2015, David Deitch, counsel for co-defendant SB Medical, Inc., contacted Mr. Casper as part of SB Medical's submission of a motion to continue the March 20, 2015 motions hearing date and the April 7, 2015 trial date. Mr. Casper informed Mr. Deitch that he was unavailable for the time period of April 19-28 due to previously scheduled international travel to Israel, and had additional obligations upon his return. These travel plans were made prior to Mr. Stein retaining Mr. Casper in this case, and he is unable to reschedule the trip due to longstanding appointments in Israel during his travel. SB Medical's motion to continue requested a trial date of May 13, 2015.

In response to SB Medical's motion to continue, Ms. Dena Roth, law clerk to the Honorable Anthony J. Trenga, contacted defense counsels by email to notify the parties that the only available trial dates are April 7 and April 27, 2015. Prior to SB Medical's motion, Mr. Casper had no reason to believe that April 27, 2015 was a possible trial date. Upon learning that the Court was considering that date, Mr. Casper promptly notified the Court that he was unavailable, by local counsel's response to Ms. Roth's email. The motion to continue the trial from April 7, on behalf of SB Medical, is to accommodate Mr. Deitch's co-counsel Jeff Ifrah, for whom Mr. Deitch intends to move for admission pro hac vice.

The Government has no objection to continuing this case from April 27, 2015 to a date available for the Government.

Mr. Casper's Travel to Israel

Mr. Casper began planning international travel to Israel in the Fall of 2014, and booked his ticket on December 26, 2014. As the organizer of the trip for himself and twelve congregants of his temple, Mr. Casper was responsible for making travel and lodging arrangements, constructing the trip itinerary, and executing that itinerary during the duration of the trip. The cost of the plane ticket alone is \$1508, and Mr. Casper has paid non-refundable deposits for the flight, lodging and other transportation during the trip. At this point, cancellation of the trip would cause a loss of several thousand dollars for Mr. Casper alone *and* also for the twelve other congregants who have purchased plane tickets and contributed to lodging and transportation deposits.

Due to the expense and difficulty of traveling to Israel, Mr. Casper has scheduled appointments with several clients during his time in Israel. If Mr. Casper was forced to cancel those appointments, he would likely lose those clients.

Argument

In compliance with Rule 57.4, Mr. Casper was admitted pro hac vice prior to the January 30, 2015 arraignment and is lead counsel in this case. A trial date of April 27, 2015 would require Mr. Stein to pay for new counsel and would deny him his Sixth Amendment right to his choice of counsel. An element of the Sixth Amendment right to counsel "is the right of a defendant who does not require appointed counsel to choose who will represent him." United States v. Gonzalez-Lopez, 548 U.S. 140, 144 (2006). The right to counsel of choice "has been regarded as the root meaning of the constitutional guarantee," and thus, if such right is wrongly denied, 'it is unnecessary to conduct an ineffectiveness or prejudice inquiry to establish a Sixth

Amendment violation.”” United States v. Perry, 30 F.Supp.3d 514, 532 (E.D. Va. 2014)(citing Wheat v. United States 486 U.S. 153, 159 (1988)).

Mr. Stein has retained Mr. Casper as his attorney to represent him in this matter, and Mr. Casper has complied with all rules of procedure to appear pro hac vice. Mr. Casper has invested significant time in the case, regularly has met with Mr. Stein (who also resides in Baltimore, Maryland), and reviewed extensive discovery produced by the Government. Mr. Casper is making the request weeks in advance of trial and immediately upon learning of the new trial date, and the continuance request is not based on any strategy or intent to delay the proceedings, but solely based on the previously scheduled trip to Israel. In that light, Mr. Stein waives his right to speedy trial and Mr. Casper will make himself available for any date beginning May 4, 2015.² Therefore, Mr. Stein’s right to counsel of his choice far outweighs the inconvenience of pushing back or moving forward the trial. *See United States v. Sellers*, 645 F.3d 830, 838 (7th Cir. 2011) (holding that in evaluating the balance of the circumstances of defense counsel’s continuance motion against the needs of fairness and the demands of the court’s calendar, the inconvenience of pushing a trial back a month or so can easily be outweighed by a defendant’s interest in having counsel of choice); Releford v. United States, 288 F.2d 298 (9th Cir. 1961) (reversing defendant’s conviction on the basis that the defendant was denied his sixth amendment right to counsel when defendant’s retained counsel fell ill shortly before the trial and expected to be unable to appear for about two weeks, and the trial judge refused to grant a continuance.)

² Mr. Stein is the only individual defendant left in the trial of this matter, and thus the only party with any speedy trial rights. Given the millions of pages of discovery produced by the government, and the discovery order which requires the government to make certain disclosures and productions within a week of trial, Mr. Casper respectfully requests that the trial not start within the day or two of his return.

WHEREFORE, based on the foregoing, Mr. Stein moves this Honorable Court to continue or advance the April 27, 2015 trial date to any date outside the time period of April 19-May 1, 2015.

Respectfully submitted,

HANOCH DAVID STEIN

By: _____/s/_____
Counsel

James W. Hundley (VSB No. 30723)
Erin L. Blanch (VSB No. 75020)
BRIGLIAHUNDLEY, P.C.
1921 Gallows Road, Suite 750
Tysons Corner, Virginia 22182
Telephone: (703) 883-0880
Facsimile: (703) 883-0899
jhundley@brigliahundley.com
eblanch@brigliahundley.com

Ari S. Casper
The Casper Firm, LLC
One South Street, 27th Floor
Baltimore, Maryland 21202
Telephone: (410) 989-5067
Facsimile: (410) 630-7776
acasper@casperfirm.com

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2015, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF System, which will send notice of such filing to the following:

Alexander Nguyen
Assistant United States Attorney
Office of the United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
703-299-3700
Email: Alexander.nguyen@usdoj.gov

Jay Prabhu
Assistant United States Attorney
Office of the United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
703-299-3700
Email: jay.prabhu@usdoj.gov

Kellen Dwyer
Assistant United States Attorney
Office of the United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
703-299-3700
Email: kellen.dwyer@usdoj.gov

/s/

James W. Hundley
Erin L. Blanch
BrigliaHundley, P.C.
1921 Gallows Road, Suite 750
Tysons Corner, Virginia 22182
(703) 883-0880
jhundley@brigliahunley.com
eblanch@brigliahunley.com